

Local Authority I & Others v AF (Mother) & Others [2014]

[2014] EWHC 2042 (Fam)

20/06/2014

Barristers

Sally Bradley
Chris Barnes

Court

Family Division

Practice Areas

Public Children Law

Summary

Cobb J disposed of long-running care proceedings which had featured 'a calculated, clandestine and audacious abduction' of the children by the parents. The Judge summarised the law in relation to the revocation and making of care and placement orders, and exceptions to the 26-week deadline. Cobb J further reiterated procedural requirements at ex-parte hearings and in the preparation of trial bundles.

Facts

The facts, in summary, were as follows. The safeguarding concerns included long-term drug abuse, domestic violence, long-term neglect and chaotic lifestyles. The care proceedings in respect of CF and DF had been concluded at a final hearing in March 2013. EF was at that time the subject of care proceedings brought by LA2 and residing with the parents at a specified address under a written agreement. Within two months of that judgment the Mother flew with EF to country X, where the Maternal Grandfather resided. Country X is a signatory to the Hague Convention but this has not been ratified between country X and the UK. The Mother then immediately returned to the UK and the Mother and Father together removed CF and DF from a contact session and brought them to country X. The Judge described this abduction as "a calculated, clandestine, and audacious act undertaken [...] with scant regard for the welfare of the children" [255]. Over the following months the parents entered into email negotiations with the both local authorities, proposing to return to the UK on the condition that the care plans would be amended. In October 2013 the Judge ordered the family to return. Pursuant to a negotiated agreement, the family returned to the UK and commenced a residential assessment. This broke down dramatically and the children were placed with foster carers. The parents then had 'good quality' contact, save for a time period during which they each served prison sentences for offences of child abduction under the Child Abduction Act 1984. In all, by the time this judgment was delivered the family had been subject to care proceedings for approximately 30 months.

On the facts, the tests for granting leave to revoke the placement and care orders relating to CF and DF

were not met, and the circumstances required the making of care and placement orders in respect of EP. No order was made in relation to direct contact for any of the immediate or wider family.

Held

The Judge gave clear and helpful summaries of the relevant authorities at paras [89] to [106]. Interestingly, the Judge stated that the authorities render it inappropriate to make an exception to the 26-week rule where there is a need to achieve change in a parent (see paras [93] to [99]). The consideration of the court's options for disposing of the applications at paras [234] to [251] is a detailed, balance-sheet analysis of the evidence read in light of the law, and a holistic view of the issues is set out in the conclusion at paras [252] to [282].

The Judge provided particular guidance to practitioners on the topics of (i) out of hours and without notice hearings, at para. [295] to [301], and (ii) the preparation of bundles, at paras [302] to [305], as follows.

At an interim stage in the proceedings the Judge had heard an urgent without notice application by LA1 as a consequence of the dramatic breakdown of a residential placement. The Judge had required further investigation to be undertaken by the Applicant to establish each of the Respondents' positions before determining the application, and this was duly complied with. Counsel who acted at that hearing and made the application did not appear in the case subsequently, and at the final hearing there were important unanswered questions about how the parties' positions had come to be communicated. This was unsatisfactory. At paragraph [299], the Judge reiterated that:

"It is, in my judgment, not just important but essential that in a hearing of this nature in this kind of case, counsel or solicitor instructed should prepare a note of the hearing and circulate it to the respondents forthwith following the hearing."

The Judge cited ruled 25.3 CPR 2010 in relation to counsel's duty to provide such a note, and reminded practitioners of the view of Munby J (as he then was) expressed in *C v C (Without Notice Orders)* [2005] EWHC 2741 (Fam).

The Judge further criticised the condition of the (nine) bundles provided, the pagination of which "was, in parts, of impenetrable and wholly avoidable complexity" [303]. The Judge cited the provisions of PD27A FPR 2010 (as amended) and expressed disappointment that "the warning about wasted costs was not of itself sufficient to ensure compliance" [305].

Permission

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